

THE CHURCH
AND THE PROPOSED
EQUAL RIGHTS
AMENDMENT
A MORAL ISSUE

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THE CHURCH AND THE PROPOSED EQUAL RIGHTS AMENDMENT A MORAL ISSUE

Recently there has been increasing nationwide interest in the stand of The Church of Jesus Christ of Latter-day Saints on the proposed Equal Rights Amendment. Many members of the Church are sincerely asking, "Why has the Church considered this a moral issue?" and "Why has the First Presidency taken so positive a stand on the matter?"

For the benefit of subscribers, members, and nonmember friends and neighbors, Church magazine personnel have researched this issue and have attempted to answer these questions with the following information: first, a contents listing of

questions, answered in quick summary form, pages 2-3; second, a more detailed discussion on those questions, pages 5-17; and third, statements of the First Presidency on the issue, pages 19-23. Those statements are introduced by a review of the First Presidency's responsibility to give such counsel, and members' responsibility as they receive it.

Some issues that confront societies are strictly political issues, some are moral issues, and many are both political and moral issues. Though the proposed Equal Rights Amendment has both political and moral aspects, emphasis is given here to its moral implications.

SUMMARY QUESTIONS AND ANSWERS

1. *Does the Church favor equal rights for women?*

The Church is firmly committed to equal rights for women, but opposes the proposed Equal Rights Amendment because of its serious moral implications.

see p. 5

2. *What is the Equal Rights Amendment?*

It is the proposed Twenty-seventh Amendment to the U.S. Constitution. In fewer than 60 words it states that under the law, equality of rights will not be denied on account of sex. It also gives Congress the power to enforce it.

see p. 6

3. *Why have its proponents felt the ERA is needed?*

It has been felt that only a constitutional amendment could provide the massive impact needed to change laws that discriminate on the basis of sex.

see p. 6

4. *Is sex discrimination already constitutionally prohibited?*

Yes. Based on the Fourteenth Amendment, court rulings in recent years have prohibited sex discrimination while still allowing for natural differences.

see p. 6

5. *Why haven't sex-related inequities been recognized and legislated against before?*

They have. Existing laws now prohibit sex discrimination in virtually all areas of American life, including education, employment, credit eligibility, and housing.

see p. 7

6. *Would ratification of the ERA erase present inequities?*

The ERA does not automatically guarantee equal

rights. Existing discriminatory laws would still have to be repealed or amended—the same process of change now being followed. In addition, the ERA would not affect many inequities that result from attitudes and customs. It would prohibit only governmental discrimination.

see p. 7

7. *Why is the ERA primarily a moral question?*

Court and administrative interpretations of the ERA could endanger time-honored moral values by challenging laws that have safeguarded the family and afforded women necessary protections and exemptions.

see p. 8

8. *What would be the impact of the ERA on abortion?*

Any reasonable chance for reversing the accelerating trend of courts to grant abortion on demand would probably be eliminated. It could affect issues that have yet to be decided, such as whether parents of minors must be notified and whether government funds will be involved.

see p. 9

9. *What would be the impact of the ERA on homosexual marriages?*

Constitutional authorities indicate that passage of the ERA could extend legal protection to same-sex lesbian and homosexual marriages, giving legal sanction to the rearing of children in such homes.

see p. 9

10. *What would be the ERA's impact on military service for women?*

ERA proponents concede that its passage would impose upon women the same draft requirements as men and the further probability of comparable combat duty, with the particular hazards that poses for women.

see p. 9

11. How would the ERA affect the family?

The ERA could make it more difficult for wives and mothers to remain at home because it could require the removal of legal requirements that make a husband responsible for the support of his wife and children. It could place an added tax burden on the single-income family in order to attain Social Security benefits for the wife, and it could pose the threat of compulsory military service even for married women.

see p. 10

12. What does the Church teach about the particular responsibilities of fathers and mothers?

Our Creator has especially suited fathers and mothers, through physical and emotional differences, to fulfill their own particular parental responsibilities. Legislation that could blur those roles gives cause for concern.

see p. 11

13. Are there dangers in the wording of the amendment?

The vague language of the ERA will, in the opinion of recognized legal scholars, do too little or too much. It is impossible to predict how the courts might interpret this imprecise language should it become part of our Constitution.

see p. 12

14. Would the ERA further erode the constitutional division of powers?

It would transfer from states to the federal government much of the power to deal with domestic relations, and further shift much law-making authority from locally elected legislators to nonelected federal judges.

see p. 12

15. What has happened in states with a similar equal rights amendment?

Court interpretations of similarly worded state amendments give cause for serious concern. State court rulings suggest that reasonable distinctions between the sexes might not be allowed under the ERA.

see p. 13

16. Why is the ERA's legislative history alarming?

The legislative history of the ERA clearly indicates the intent of Congress to allow no

distinctions on the basis of sex. When the ERA was considered, Congress *rejected* moderating amendments designed to secure privacy to men and women, boys and girls; to extend protection to wives, mothers, or widows; to exempt women from compulsory military service and, particularly, service in combat units; to impose upon fathers responsibility for the support of their children; and to make sexual offenses punishable as crimes. Courts will look to this legislative history as they interpret the amendment.

see p. 14

17. Does the Church's opposition to the ERA violate the First Amendment doctrine of separation of church and state?

No. Churches have a responsibility and a right to speak out on moral issues. The Constitution neither states nor implies that churches shall not involve themselves in moral issues pertaining to government, only that government shall not establish a religion or prohibit the exercise of religion and free speech.

see p. 15

18. Has the Church encouraged members to oppose ratification of the ERA?

Yes. The First Presidency has repeatedly encouraged Church members, in the exercise of their constitutional right as citizens, to make their influence felt in opposition to the proposed amendment.

see p. 16

19. Have tithing and other general Church funds been given to groups opposing the ERA?

Church funds have not been given to groups, either in or out of the Church, who oppose the amendment.

see p. 16

20. Is favoring the ERA grounds for excommunication?

No. Contrary to news reports, Church membership has neither been threatened nor denied because of agreement with the proposed amendment. However, there is a fundamental difference between speaking in favor of the ERA on the basis of its merits on the one hand, and, on the other, ridiculing the Church and its leaders and trying to harm the institution and frustrate its work.

see p. 17

FREQUENTLY ASKED QUESTIONS ABOUT THE PROPOSED EQUAL RIGHTS AMENDMENT: A CLOSER LOOK

Does the Church favor equal rights for women?

Yes. The Church recognizes men and women as equally important before the Lord and the law. In 1842, when women's organizations were little known, the Prophet Joseph Smith established the women's organization of the Church, the Relief Society, as a companion body of the priesthood. Still functioning today, its aims are to strengthen motherhood and encourage women's learning and involvement in religious, compassionate, cultural, and community pursuits.

In 1870, fifty years before the passage of the Nineteenth Amendment to the Constitution granting suffrage to women, the women of Utah received the right to vote.

According to Church doctrine, men and women are as one—completely necessary to each other's eternal exaltation. This fundamental belief is eloquently stated by Elder John A. Widtsoe, a former member of the Quorum of the Twelve:

"The place of woman in the Church is to walk beside the man, not in front of him nor behind him.

"In the Church there is full equality between man and woman. The gospel . . . was devised by the Lord for men and women alike. Every person on earth, man or woman, earned the right in the pre-existent life to come here; and must earn the right, by righteous actions, to live hereafter where 'God and Christ dwell.' . . . The privileges and requirements of the gospel are fundamentally alike for men and women. The Lord loves His daughters as well as He loves His sons. . . .

"This makes individuals of man and woman—individuals with the right of free agency, with the power of individual decision, with individual opportunity for everlasting joy, whose own actions throughout the eternities, with the loving aid of the Father, will determine individual achievement. There can be no question in the Church of man's rights versus woman's rights" (*Improvement Era*, Mar. 1942, p. 161).

In other words, women, as well as men, are individual agents responsible for the lives they lead, and they are accountable to God, according to eternal laws.

President Spencer W. Kimball has reaffirmed, "The scriptures and the prophets have taught us clearly that God, who is

perfect in his attributes of justice, 'is no respecter of persons' (see Acts 10:34). . . . We had full equality as his spirit children. We have equality as recipients of God's perfected love for each of us" (ENSIGN, Nov. 1979, p. 102).

The Church recognizes that there have been injustices to women before the law and in society. Where specific laws or practices discriminate against women, members are counseled to work energetically for appropriate change.

²What is the Equal Rights Amendment?

The ERA is the proposed Twenty-seventh Amendment to the United States Constitution. Different versions of an equal rights amendment have been considered by Congress since 1923. On 22 March 1972 a Congressional resolution proposed the current equal rights amendment, without allowing any moderating amendments which would have provided for reasonable exceptions (see question 16, p. 14). Congress specified that ratification by three-fourths of the states should take place within seven years of that date. In 1979, that ratification deadline was extended to 30 June 1982.

The Equal Rights Amendment reads, in its entirety, as follows:

Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3: This amendment shall take effect two years after the date

of ratification.

³Why have its proponents felt the ERA is needed?

Proponents of the ERA have cited two basic reasons for its passage. First, when this version of the ERA was introduced in Congress in 1971, its sponsors stated that there were then far too many sex-discrimination laws on the books at local, state, and federal levels to ever be effectively taken care of on a law-by-law basis. Second, ERA proponents also claimed that sex discrimination had not been adequately prohibited by court interpretations under the existing Constitution, specifically the equal protection clause of the Fourteenth Amendment.

"Only a Constitutional Amendment, with its *massive legal, moral and symbolic impact*, can provide the impetus for the necessary changes in our laws," stated Common Cause, an organization working for ERA passage (*The Equal Rights Amendment: A Report on the Proposed 27th Amendment to the Constitution*, position sheet, p. 1; italics added).

⁴Is sex discrimination already constitutionally prohibited?

Based on the Fourteenth Amendment, court rulings in recent years have prohibited sex discrimination while allowing for reasonable distinctions. The guaranty of equality contained in the U.S. Constitution is found in the first section of the Fourteenth Amendment. The precise language is: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The courts have clarified that the Fourteenth Amendment's equal protection clause prohibits gender-based discrimination. The standard is that "to withstand constitutional challenge, . . . classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives" (*Craig v. Boren*, 429 U.S. 190 (1976)).

Under that standard, many laws drawing classification lines based on sex have been held unconstitutional, including laws preferring men over women in the administration of estates (*Reed v. Reed*, 404 U.S. 71 (1971)), laws requiring servicewomen, but not servicemen, to prove their spouses are financially dependent in order to obtain certain benefits (*Frontiero v. Richardson*, 411 U.S. 677 (1973)), and laws making the age of majority for women eighteen and for men twenty-one (*Stanton v. Stanton*, 421 U.S. 7 (1975)).

This means that distinctions made on the basis of sex already receive careful judicial scrutiny, and can be made only where there is strong justification that the distinction is a legitimate one. This allowance recognizes important differences between the sexes, differences that would probably not be recognized under the ERA, in light of its language and legislative history. In addition, the ERA could jeopardize existing rights and protections.

⁵ Why haven't sex-related inequities been recognized and legislated against before?

They have. In fact, even the National Commission on International Women's Year, a strong supporter of ERA, reported to the President in 1976 that "the Congress has adequate authority now to enact any legislation

to end legal discrimination" (" . . . To Form a More Perfect Union . . .", p. 377).

Here is just a partial list of the existing laws which prohibit discrimination, on the grounds of sex, in virtually all areas of American life—education, employment, credit eligibility, housing, public accommodation: The Equal Pay Act of 1963, the Civil Rights Act of 1964, the Health and Manpower Training Act of 1971, the Equal Employment Opportunity Act of 1972, the Comprehensive Employment and Training Act of 1972, the Small Business Act of 1972, the Housing and Community Development Act of 1974, the Federal Employees Compensation Act of 1974, executive orders issued by the President, and many state laws.

This means that under the Constitution, without the proposed amendment, laws can be changed—and have been changed—to rectify wrongs and meet needs as they become evident. Needed changes can be made now, without waiting for passage of the ERA, which would not take effect until two years after its ratification. In addition, making changes now would avoid the time-consuming litigation that would inevitably follow ratification.

⁶ Would ratification of the ERA erase present inequities?

No. Here are the reasons why it would not:

First, because the ERA would remove no law from state codes. Discriminatory laws that still exist must be scrutinized and removed by state legislatures or as individuals bring suit in federal courts.

Second, some inequities in society are the result of attitude. Most of these inequities are already covered under law, yet they continue to occur. Additional laws will

not change the inequities that exist in society as a result of these attitudes.

Third, the Equal Rights Amendment does not purport to deal with anything other than governmental discrimination, and governmental discrimination is already prohibited by the Fourteenth Amendment. The ERA would not touch discrimination by nongovernmental entities until specific implementing legislation is passed at state or national levels. Such legislation is already authorized.

Former assistant U.S. Attorney General Rex Lee, currently dean of the Brigham Young University Law School, has stated:

"In all the debates over ERA in which I have participated, I have yet to hear anyone suggest a single discriminatory law, which a majority of Americans would want repealed, that would not already be unconstitutional under the Fourteenth Amendment."

Why is the ERA primarily a moral question?

Morals have to do with standards of right and wrong. We believe that, for many social issues in contemporary society, God has given applicable moral standards of right and wrong. These time-proven principles are important to us as a religious people. Previous First Presidency statements have identified some of the areas where issues of morality are involved, such as failure of fathers to care for their families, elimination of statutory protection for women and children, problems resulting from women in the military, homosexual and lesbian activities, abortion, and similar concerns (see pp. 9-11, 12-13).

Recently Rabbi Sol Roth, vice-president of the Rabbinical Council of America, observed that for much of the religious community, the Equal Rights Amendment

presents a serious challenge:

"On the one hand, we endorse enthusiastically the application of the principle of equality to every segment of society. But on the other, we are deeply concerned that, if passed, ERA will be implemented in ways that will collide with moral and religious ideals to which we are equally committed" (*New York Times*, 12 Dec. 1978, p. A-22).

One California attorney has assessed the moral effects of the ERA as follows:

"The basic concern of the Church with regard to the ERA as a moral issue is that women will be treated less favorably in many fundamental regards; and also that the family unit—in the Mormon sense of a sacred and eternal relationship—will be denigrated, causing great and substantial damage to not only the Church but also the nation and the basic ideals which have made this country great" (Keith Petty, letter, 31 May 1979).

It is in the ERA's impact on family relationships (see question 11, p. 10) that we find its most disturbing moral ramifications. As Elder Neal A. Maxwell has said:

"There is an ecology in human nature which is just as real as the ecology in nature. When we violate the ecology of nature, we are learning more than ever that there are certain consequences that follow. So it is with human nature. The other institutions of society depend upon the institution of the family; to alter the family is to alter society.

"It is in the family that we not only first, but best, learn, if we do learn, those very attitudes and skills upon which our whole nation depends. . . .

"It is in the family we best learn to work, to love, to forgive, to be committed to justice" ("Choosing the Good Part," speech, Palm Beach, Florida, 23 Mar. 1977).

The moral obstacles associated with the ERA are overwhelming; they require our firm conclusion that the ERA is a serious

moral issue and its passage could significantly affect the standards of right and wrong that are vital to us as a religious people. In some cases, trends are already in motion in society to bring about the troubling changes listed above. We feel the ERA would accelerate these trends.

⁸ What would be the impact of the ERA on abortion?

There is a direct link between the ERA and permanently granting the right to abortion on demand. Significantly, this link was pointed out by Sara Weddington, the attorney who argued and won the 1973 Supreme Court abortion case. In testimony before the Senate Subcommittee on Constitutional Amendments, she said: "It seems to me that what the ERA is all about is trying to say that women should have full choices about how their lives are spent and what their life's plan is. And yet, when you say to women, 'we will give you all those choices through ERA, but if you become pregnant, you must go through pregnancy,' we are in essence denying them the benefit of the equal rights amendment" (Hearings before the Subcommittee on Constitutional Amendments of the Committee of the Judiciary, 94th Congress, 11 Apr. 1975, p. 299).

Charles E. Rice of the University of Notre Dame Law School said, "The potential effects of ERA on abortion are sufficient, it seems to me, to cause all those who oppose abortion to oppose the ERA" ("ERA: Easy Rampant Abortion," *Wanderer*, Feb. 1975).

Since 1973 there has been a series of court decisions in the United States affirming the right to abortion on demand. Any reasonable chance for reversing that trend would probably be eliminated under the ERA. Moreover, other issues related to

abortion (such as whether parents of minors must be notified and whether government funds will be involved) are still being decided by the courts. Those decisions will certainly be affected if the ERA is adopted.

⁹ What would be the impact of the ERA on homosexual marriages?

In hearings before the Senate Judiciary Committee, Paul A. Freund of Harvard Law School testified: "Indeed if the law must be as undiscriminating concerning sex as it is toward race, it would follow that laws outlawing wedlock between members of the same sex would be as invalid as laws forbidding miscegenation [interracial marriages]" (*Senate Report* 92-689, p. 47).

Passage of the ERA would carry with it the risk of extending constitutional protection to immoral same-sex—lesbian and homosexual—marriages. The argument of a homosexual male, for example, would be: "If a woman can legally marry a man, then equal treatment demands that I be allowed to do the same." Under the ERA, states could be forced to legally recognize and protect such marriages. A result would be that any children brought to such a marriage by either partner or adopted by the couple could legally be raised in a homosexual home. While it cannot be stated with certainty whether this or any other consequence will result from the vague language of the amendment, the possibility cannot be avoided.

¹⁰ What would be the ERA's impact on military service for women?

Many proponents of the ERA conclude that if men are drafted, women should be also. They point to Israel as an example of a democracy where both men and women are required to serve in the military. Israeli women, however, are subject to an equal rights provision that does not require absolute equality in the military. They serve shorter terms than men. They are exempt from service if they marry or have a child. They live in separate barracks and are not subject to combat.

Women have given and continue to give invaluable patriotic service in the military. But to require women to serve, especially on the same basis as men, would remove a traditional freedom. Further, many ramifications of the ERA in military life deeply concern us. For example, it is anticipated that under the ERA men and women in the military could be compelled to live in mixed housing, which would violate the religious and moral ideals of many.

Senator Hiram Fong of Hawaii raised this question concerning the ERA and the military. He said: "If women are found physically qualified (under the same tests administered to determine men's qualifications) they will, in all likelihood, be required to serve in combat. Separate units for women will, I believe, be abolished just as separate ethnic and racial units in the Armed Forces have been abolished—both men and women will serve in the same units. What privacy women will be able to be afforded, if any, is uncertain" (*Senate Report 92-689*, pp. 24-25).

Recent newspaper reports have focused on other hazards to women in the military. In a UPI release, Senator William Proxmire (D-Wis.) noted an effect of more women serving alongside men in the army. There is "growing evidence that sexual abuse of women has become pervasive on certain bases." He continued: "The pattern of sexual abuse ranges from persistent verbal harassment and sexual comment to explicit

threats and coercion to trade sex for promotion or other privileges" (*Deseret News*, 3 Jan. 1980, p. A-13).

Under the ERA, with more women required to serve on the same basis as men, it is feared that such abuses would only increase. General Elizabeth Hoisington, former director of the Women's Army Corps, has pointed out the "peripheral dangers of serving in combat units—being raped by strangers or temporarily crazed comrades; being taken prisoner of war and being abused, beaten, and starved; being mentally and physically incapable of performing one's assigned duties in combat and responsible for others' being killed or wounded. . . .

"There is more to fear than being killed and not returning to your loved ones at home," she concluded (*Washington Star*, 9 Jan. 1980, pp. A-1 ff).

Under existing laws, Congress has the power to draft women, but even in dire national emergency has never chosen to do so. Should it at some time exercise that power, Congress could give women the option of not going into combat and could preserve their privacy rights. Congress could even rescind the drafting of women. Passage of the ERA would not allow Congress any of these options.

¹¹ How would the ERA affect the family?

When God created male and female, he gave each important differences in physical attributes and family responsibilities. Though imperfect, our country's laws have generally supported those differences.

Many women, wives and mothers included, must of necessity work outside the home. The inequalities they encounter can be dealt with under existing law. For those,

however, who choose to remain in the home and maintain a traditional family, passage of the ERA may make their choice more difficult.

Family support is one area where pressures might be put on the family. In the *Yale Law Journal*, Professor Thomas I. Emerson, an ERA proponent, wrote: "In all states, husbands are primarily liable for the support of their wives and children. . . . The ERA would ban a state from imposing greater liability for support on a husband than on a wife merely because of his sex" (80:944-45). We see some evidence of this in states where similarly worded amendments have already been added to state constitutions: husbands are no longer necessarily responsible for the support of their minor children; husbands may have no legal obligation to pay their wife's medical expenses, etc. (see question 15, p. 13).

An additional danger is that, instead of merely changing laws to give a wife the same responsibility as her husband for family financial support, passage of the ERA could eliminate all legal responsibility for both spouses. A "Brief in Support of Ratification of the Equal Rights Amendment," prepared for the League of Women Voters by the New York law firm of Bellamy, Blank, Goodman, Kelly, Ross, and Stanley, states: "Legislatures will have to redefine . . . the obligation of support between husband and wife. . . . Criminal laws which make a husband liable for the support of his wife should probably be repealed rather than extended to cover women" (p. 15).

If this law firm's opinion proves true, women contemplating marriage would have no legal guaranty of financial support. Women already married who prefer to remain home and bear children would not only be giving up their own earning power but would also be unable to legally count on child support from their husbands. Great pressures could be brought to bear on a woman not to marry or have children and to

join or remain in the labor force.

In addition, financial columnist Sylvia Porter predicts that in order to extend Social Security benefits to a woman, the ERA would, in cases where a wife has no outside employment, require the husband to pay Social Security taxes on the value of the wife's contribution in the home (syndicated column, 8 Apr. 1975). Thus, the single-income family's tax burden would be increased, and in some cases the wife could be forced to work outside the home.

Another threat to the family would be the possibility of compulsory military service for women (or the first spouse to be drafted), and even worse, compulsory military service in combat zones (see question 10, p. 9).

¹² *What does the Church teach about the particular responsibilities of fathers and mothers?*

The Church does not seek to alter physical and emotional differences set by God. In the beginning God did not create a neuter "them"—but "male and female created he them" (Gen. 1:27). Regarding the central role they held in common, God said to both, "Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth" (Gen. 1:28). Life was meant to bring—and can bring—great joy and happiness. But that happiness depends, in part, on men and women, as parents, discovering and fulfilling the roles to which each is especially suited.

At the time of the Creation, the responsibility of bearing and nurturing children was assigned the mother. The

primary role of providing was assigned the father. There is nothing in all of scripture that alters this fundamental understanding; and indeed, modern scripture and modern prophets have reinforced this basic relationship between mothers and fathers. However, the opportunity to "subdue" the earth and to "have dominion" over it applies equally to the full creative abilities and energies of all God's children, male and female, married or single. But within the stewardship of parenthood, God took care to describe the primary responsibilities of mothers and of fathers.

Therefore, it is with this understanding of God's instructions that we have noted the negative impact that ERA could have on present laws protecting mothers and children from fathers who do not accept legal responsibilities for their children, and on present laws protecting family structure and relationships between husbands and wives. The proposed ERA challenges this entire scriptural understanding, brings ambiguity to relationships where ambiguity need not exist, and portends tragic consequences for individuals and society.

13 *Are there dangers in the wording of the amendment?*

In the opinion of BYU Law School Dean Rex E. Lee, "By its nature, it will either do too little or too much. . . .

"The highly vague language of the ERA has the potential to do far more than simply add one additional suspect classification (sex) to existing equal protection doctrine. How much more? I really don't know. And that is the greatest problem.

"It is beyond argument, I would suppose, that some of today's applications and interpretations of the due process and equal protection clauses were beyond the

contemplation of the draftsmen of the Fourteenth Amendment. For example, I am sure that the suggestion that they were dealing in any way with abortion would have come as a great surprise to the draftsmen of the Fourteenth Amendment. And yet, in a larger sense, no one can legitimately claim total surprise, because one of the risks—in my view the major risk—from adoption of a constitutional amendment having the vagueness of the Fourteenth Amendment or the ERA is that it necessarily vests the courts with a potential for policymaking unforeseen at the time the amendment was adopted. In the case of the Fourteenth Amendment the risk was worth running, because we had no general constitutional guaranty of equality. The same is not true of the Equal Rights Amendment.

"We ought not to close our eyes, therefore, to the fact that we don't know what kind of content the courts will pour into this highly vague language over the centuries that it will be a part of our Constitution. Most proponents of the ERA staunchly deny most of the examples that constitute the parade of horrors suggested by the opponents: homosexual marriages, single-sex public bathrooms, diminution of privacy in public facilities, etc. I am sure that many of the proponents are very sincere in these assurances. But I am equally sure that there are other people for whom these are the desired results. And with a constitutional amendment we can't be sure until we have had the years, the decades, and even the centuries of litigation that will surely ensue to determine what it really means."

14 *Would the ERA further erode the constitutional division of powers?*

Recognized constitutional authorities state that the Equal Rights Amendment would represent a serious eroding of the powers of states and would result in a massive transfer of legislative power dealing with domestic relations from the states to the federal level. This transfer would greatly disrupt the division of powers central to our constitutional system. Domestic relations laws are now passed, interpreted, and enforced primarily at local and state levels. This permits local flexibility for differing cultures, ideals, and customs. Section 2 of the proposed Equal Rights Amendment gives Congress the power to make new laws to enforce the ERA. Family law standards could be primarily set by Congress, implemented by the federal government, and interpreted by the judiciary.

A recent example in a related area is illustrative. To enforce a provision of the Fair Housing Act (intended to prevent landlords from discriminating among renters on the basis of sex), the federal government recently tried to force Brigham Young University to abandon its requirement of separation of the sexes in off-campus student housing. When asked if this could lead to forced male-female integration of individual apartments, the government had to concede that it could.

We conclude that the ERA would also further shift law-making power from elected legislators to nonelected judges. It would accelerate the trend to govern by judicial decisions rather than by passage of law. Placing more power with the courts further erodes the separation-of-powers protective shield surrounding our freedoms. If the ERA is ratified, the federal judiciary will be required to interpret the broad language of the amendment to give new, specific, legal definitions to its sweeping provisions. In order for the law to be implemented, someone has to say what these broad terms mean in such specific contexts as sexual preference, mother/daughter and father/son

activities, women in the military, and dormitory living. Under the Constitution, that responsibility is vested in the courts, and once they speak, their decisions are difficult to change. Thus, a new amendment, with key terms to be defined, effectively grants law-making power to the unelected judiciary. One political observer, Michael Kilian, has said that such a condition exists with the proposed Equal Rights Amendment, which he calls "a menace that must be defeated for reasons that have nothing to do with either side of the issue of women's rights. The reasons have to do with another menace, *perhaps the greatest menace to individual freedom and representative government in the history of the nation: Government by judicial fiat*" (syndicated column, *Chicago Tribune*, 10 Aug. 1978, sect. 3, p. 2; italics added).

Therefore, maintaining the essential separation and division of powers provided for by the divinely inspired Constitution is a moral issue for Latter-day Saints. The Lord himself has said "that every man may act in . . . moral agency, that every man may be accountable for his own sins. . . . For this purpose have I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose" (D&C 101:78, 80; see also D&C 98:5-6). Without the full freedoms and safeguards it guarantees, our people, our ideals, and our practices could be gravely threatened.

¹⁵ *What has happened in states with a similar equal rights amendment?*

Seventeen states have passed a state equal rights amendment. The language of eleven of those state amendments is substantially different from that of the

proposed federal ERA, containing the more flexible "equal protection of the law" concept of the Fourteenth Amendment. Those eleven state amendments thus allow the courts to make "reasonable exceptions" and differentiation between the sexes when interpreting the law. But the remaining six state amendments have the same or nearly the same "no exceptions allowed" language as the federal ERA. Experience in these states thus gives reason for concern regarding the proposed federal amendment. In judicial interpretations of some of these state equal rights amendments, an absolutist, inflexible approach appears to be evolving.

Here are examples of rulings made under those state amendments with language similar to the ERA:

Maryland

Coleman v. Maryland, 37 Md. App. 322, 377 A.2d (1977): The court in this case held that a husband could no longer be required to support his wife. Newspaper reports of the case termed the ruling "unfortunate," but admitted that the court had no choice under the state equal rights amendment.

Pennsylvania

Conway v. Dana, 456 Pa. 536, 318 A.2d 324 (1974): This case exempted a father from providing primary support for his minor children.

Albert Einstein Medical Center v. Nathans, 5 D&C 3d 619 (1978): The trial court in this case nullified a husband's legal responsibility to pay for his wife's hospital and medical bills—or any "necessaries," as previously required by law.

Commonwealth v. PA Interscholastic Athletic Association, 18 Pa. Cmwlth 45, 334 A.2d 839 (1975): The court in this case ruled that, under the absolute

mandate of the state equal rights amendment, all school sports must be integrated—including wrestling and football—regardless of sex. That means that students may no longer be excluded solely on the basis of their sex; they may be excluded, however, because of lack of individual ability.

Washington

Darrin v. Gould, 85 Wash 2d 859, 540 P.2d 882 (1975): In a case similar to the Athletic Association case cited above, the judge ruled that all school sports must be open to both sexes. The Pennsylvania case was relied on as precedent.

Whether these decisions are fair indicators of things to come is yet to be determined. But far more sobering than the ruling in any individual case is the realization that many of the decisions under the Fourteenth Amendment that have amounted to judicial policymaking did not begin to appear for decades, and some not for over a century. The main danger with solving current problems with a constitutional amendment whose language is as vague as that of the ERA is that future judicial and administrative policymaking is not only possible but authorized.

¹⁶ Why is the ERA's legislative history alarming?

Because all proposed moderating amendments to the ERA were rejected by Congress at the time it was considered.

Among those defeated amendments were the following:

"This article shall not impair, however, the validity of any laws of the United States or any State which exempt women from compulsory military service" (*Congressional*

Record, pp. S9317-S9337).

"... shall not impair ... any laws ... which exempt women from service in combat units of the Armed Forces" (*Cong. Rec.*, pp. S9337-S9351).

"... shall not impair ... any laws ... which extend protections or exemptions to women (*Cong. Rec.*, pp. S9351-S9370).

"... shall not impair ... any laws ... which extend protections or exemptions to wives, mothers, or widows" (*Cong. Rec.*, pp. S9517-S9524).

"... shall not impair ... any laws ... which impose upon fathers responsibility for the support of their children" (*Cong. Rec.*, pp. S9524-S9528).

"... shall not impair ... any laws ... which secure privacy to men and women, boys and girls" (*Cong. Rec.*, pp. S9529-S9531).

"... shall not impair ... any laws ... which make punishable as crimes sexual offenses" (*Cong. Rec.*, pp. S9531-S9537).

"Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functioning differences between them" (*Cong. Rec.*, pp. S9537-S9538).

"The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seduction, or other sexual offenses" (*Cong. Rec.*, pp. S9538-S9540).

With the defeat of all these moderating amendments, on 22 March 1972 the House and Senate jointly passed the ERA as it now reads. Should the ERA be ratified, *the courts will look to this legislative history as they seek*

to determine the intent of the lawmakers. The lawmakers clearly voted for no distinctions or exceptions on the basis of sex.

Court interpretations of this intent could obviously affect many areas, one of which is public accommodations. A 1978 memorandum from the Office of the Virginia Attorney General stated that under the ERA, "if the open-ended language of the Amendment is to be accorded its reasonable meaning, not only must separate colleges and prisons be abolished, but facilities within those institutions, such as dormitories, would be required to be assigned on a sexblind basis" (Memo to the Virginia Legislature on the Virginia Task Force Study on the ERA).

17 Does the Church's opposition to the ERA violate the First Amendment doctrine of separation of church and state?

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It thus prohibits the interference of the state in religious matters. Because the Constitution neither states nor implies that religions shall not involve themselves in matters pertaining to government, churches have full constitutional right to speak out on moral issues. Indeed, it is the *responsibility* of churches to provide and safeguard a moral framework in which their members can exercise their beliefs. Such concerns were a major reason for the settlement of this country; religious freedom was the first guaranty the framers of the Constitution provided for. Fundamental to the philosophy of the Constitution is the

understanding that a democratic society cannot function without moral restraint and individual discipline, values traditionally promoted by religion in general. George Washington, who presided at the Constitutional Convention, underscored this idea when he said, "Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle" ("Farewell Address" in *Documents of American History*, ed. Henry Steele Commager, New York: Meredith Corp., 1968, p. 173).

Since the First Presidency believes that basic freedoms pertaining to the family and society's moral climate will be eroded if the ERA is passed, the Church has a moral responsibility, validated by history and doctrine, to oppose the amendment.

In addition, the First Amendment right of free speech entitles individuals and institutions to responsibly express their views.

In the words of one legal scholar, "The Supreme Court of the United States has frequently reaffirmed the right of citizens or organizations to petition the government for and advocate changes in law or government practices considered to be in their best interests."

"In view of the dual guaranties of freedom of speech and religion, these rights to petition and advocate apply with even greater force to a church. Far from being inappropriate, a church has a clear right under the law and may have an ethical obligation to seek changes in laws and government practices to enable it to carry out its worthy moral and social objectives.

"While the government is forbidden from passing laws to finance or direct a church, a church and its members are not forbidden from attempting to influence the content of the laws under which they must carry out their religious functions and engage in the activities that are affected by religious ideals. In fact, their right to seek or oppose such

changes in the law is guaranteed by the freedoms of speech and religion in the First Amendment to the U.S. Constitution" (Dallin H. Oaks, 28 Jan. 1980).

18 *Has the Church encouraged members to oppose ratification of the ERA?*

Yes. The First Presidency has spoken out against the amendment and urged members to exercise their civic rights and duties and to "join actively with other citizens who share our concerns and who are engaged in working to reject this measure on the basis of its threat to the moral climate of the future."

In addition, many local Church leaders on stake and ward levels have encouraged their membership to keep informed and perform their civic duties, knowledgeably and prayerfully, in dealing with these and other important moral issues and, as their circumstances permit, participate as citizens in efforts against ratification.

Because of this counsel, many Church members have joined with other similarly minded citizens in their efforts to defeat the ERA. This instruction has also resulted in the creation of state coalitions.

19 *Have tithing and other general Church funds been given to groups opposing the ERA?*

No. Individual representatives of the Church have been invited to address audiences on the amendment, rooms in

Church buildings may have been used in isolated cases, and four pamphlets have been printed.

Individual members have donated to groups opposing the amendment, but such donations have not been given as charitable, tax-deductible contributions to the Church.

It should be noted that substantial federal and state tax monies, which all citizens are required by law to pay, have been spent to promote the amendment's ratification. Likewise, many federal and state officials have used the influence of their offices and government facilities in this effort.

20 *Is favoring the ERA grounds for excommunication?*

Membership in the Church has not been threatened nor withdrawn simply because of expressed agreement with the proposed amendment. In this, as in all other matters, members are free to accept or reject the counsel of the First Presidency. Freedom to

discuss the merits of any public issue is a legitimate exercise of citizenship, recognized and encouraged by the Church. This can be done without indulging in ridicule or attacking those with opposing views.

The mission of the Church is to save, but when those of its members publicly deride it, demean its leaders, and openly encourage others to interfere with its mission, then it may exercise its right to dissociate itself from them.

This policy was set forth as long ago as 17 August 1835:

"We believe that all religious societies have a right to deal with their members for disorderly conduct, according to the rules and regulations of such societies; provided that such dealings be for fellowship and good standing; but we do not believe that any religious society has authority to try men on the right of property or life, to take from them this world's goods, or to put them in jeopardy of either life or limb, or to inflict any physical punishment upon them. They can only excommunicate them from their society, and withdraw from them their fellowship" (D&C 134:10).

The Church, as composed of those presiding High Priests, chosen by the body, warranted and ordained to that office, and upheld by the confidence, faith, and prayer of the church" (D&C 107:22).

The First Presidency "shall have power to decide upon testimony according to the laws of the church. . . . For this is the highest council of the church of God, and a final decision upon controversies in spiritual matters. There is no any person belonging to the church who is exempt from this council of the church" (D&C 107:24-25).

It is with this understanding that members of the Church receive the counsel of the First Presidency. But even so,

But what if an individual with his "confirmation" does not support the First Presidency? Certainly. When the Apostle Paul was approached by members espousing their own interpretations, he resolved their dilemma by asking, "You saith I am of Paul, and I of Apollon, and I of Cephas, and I of Christ, is Christ divided?" (1 Cor. 1:12-13).

President George O. Cannon commented upon the extent to which counsel may be ignored or resisted: "A friend . . . wished to know whether

THE LATTER-DAY SAINT PERSPECTIVE

Scripture places sacred responsibilities upon the First Presidency of The Church of Jesus Christ of Latter-day Saints. As members of the Church, we accept the following:

"We believe in the same organization that existed in the Primitive Church, namely, apostles, prophets, pastors, teachers, evangelists, etc." (Article of Faith 6).

"The duty of the President of the office of the High Priesthood is to preside over the whole church, and to be like unto Moses, . . . yea, to be a seer, a revelator, a translator, and a prophet" (D&C 107:91-92).

The First Presidency, the presiding council of the Church, is composed of "three presiding High Priests, chosen by the body, appointed and ordained to that office, and upheld by the confidence, faith, and prayer of the church" (D&C 107:22).

The First Presidency "shall have power to decide upon testimony according to the laws of the church. . . . For this is the highest council of the church of God, and a final decision upon controversies in spiritual matters. There is not any person belonging to the church who is exempt from this council of the church" (D&C 107:79-81).

It is with this understanding that members of the Church receive the counsel of the First Presidency. But even so,

members are free to choose for themselves in order that they may have "moral agency, . . . that every man may be accountable" (D&C 101:78).

The relationship between the prophets and the members is not one of blind acceptance, contrary to some misunderstandings and misstatements, but rather places on members the full responsibility to study and pray, so that each also may receive confirmation from the Lord of the First Presidency's position on the matter at hand.

With their own understanding and confirmation from the Lord, after study and prayer, members are more able to be an influence for good among their fellowmen on that matter, and are able to assist their leaders on that and related topics. The responsibility to be of good influence and to receive individual confirmation is a right and is a serious requirement of members of the Church.

But what if an individual feels his "confirmation" does not support the First Presidency statement? When the Apostle Paul was approached by members espousing their own interpretations, he resolved their dilemma by asking: "You saith I am of Paul; and I of Apollos; and I of Cephas; and I of Christ. Is Christ divided?" (1 Cor. 1:12-13).

President George Q. Cannon commented upon the extent to which counsel may be ignored or resisted: "A friend . . . wished to know whether

we . . . considered an honest difference of opinion between a member of the Church and the authorities of the Church was apostasy. . . . We replied that we had not stated that an honest difference of opinion between a member of the Church and the authorities constituted apostasy; . . . but we could not conceive of a man publishing those differences of opinion, and seeking by arguments, sophistry and special pleading to enforce upon the people to produce division and strife, and to place the acts and counsels of the authorities of the Church, if possible, in a wrong light, and not be an apostate, for such conduct was apostasy as we understood the term. We further said that while a man might honestly differ in opinion from the authorities through a want of understanding, he had to be exceedingly careful how he acted in relation to such differences, or the adversary would take advantage of him, and he would soon become imbued with the spirit of apostasy, and be found fighting against God and the authority which He had placed here to govern His Church" (*Deseret News*, 3 Nov. 1869, p. 457).

It is clear, therefore, that members who choose not to follow the counsel of the First Presidency are completely free to do so. There is no civil or criminal penalty for religious disagreement, but there is surely a spiritual loss for the individual.

Recognizing the significance of its counsel to Church members, the First Presidency is extremely careful in taking stands on any matter affecting the lives of members. Historically, the Church has not taken positions on strictly political questions, but it has spoken out on moral issues.

The First Presidency in September 1962 said:

"Strictly political matters should be left in the field of politics where they belong. However, on moral issues, the Church and its members take a positive stand. Latter-day Saints must ever be alert and united in fighting any influence which tends to break down the moral and spiritual strength of the people" (David O. McKay, Henry D. Moyle, Hugh B. Brown).

To further clarify their role, the First Presidency has said: "The many and varied circumstances in which our Church members live . . . make it inadvisable for the Church to involve itself institutionally in every local community issue. These challenges are best responded to by members as they meet their obligations as citizens—preferably in concert with other like-minded individuals. *Only the First Presidency and the Twelve can declare a particular issue to be a moral issue worthy of full institutional involvement.* Absent such a declaration, Church members should exercise great care and caution to distinguish between what they may do as citizens in exercising their full constitutional rights and what the Church might do as an institution" (29 June 1979; italics added). That is, members involved in issues that have not been the subject of specific First Presidency counsel should not imply that their position represents the position of The Church of Jesus Christ of Latter-day Saints. But when the highest council in the Church does speak, members may represent appropriately those statements as the position of the Church.

Following are three major statements of the First Presidency relating to the proposed Equal Rights Amendment.

First Presidency Statements on the ERA

22 October 1976

From its beginnings, The Church of Jesus Christ of Latter-day Saints has affirmed the exalted role of woman in our society.

"In 1842, when women's organizations were little known, the Prophet Joseph Smith established the women's organization of the Church, the Relief Society, as a companion body of the Priesthood. The Relief Society continues to function today as a vibrant, worldwide organization aimed at strengthening motherhood and broadening women's learning and involvement in religious, compassionate, cultural, educational, and community pursuits.

"In Utah, where our Church is headquartered, women received the right to vote in 1870, fifty years before the Nineteenth Amendment to the Constitution granted the right nationally.

"There have been injustices to women before the law and in society generally. These we deplore.

"There are additional rights to which women are entitled.

"However, we firmly believe that the Equal Rights Amendment is not the answer.

"While the motives of its supporters may be praiseworthy, ERA as a blanket attempt to help women could indeed bring them far more restraints and repressions. We fear it will even stifle many God-given feminine instincts.

"It would strike at the family, humankind's basic institution. ERA would bring ambiguity and possibly invite extensive litigation.

"Passage of ERA, some legal authorities contend, could nullify many accumulated benefits to women in present statutes.

"We recognize men and women as

equally important before the Lord, but with differences biologically, emotionally, and in other ways.

"ERA, we believe, does not recognize these differences. There are better means for giving women, and men, the rights they deserve."

Spencer W. Kimball
N. Eldon Tanner
Marion G. Romney

26 August 1978

A number of questions continue to be asked concerning the Church's attitude toward the proposed Equal Rights Amendment to the U.S. Constitution. Following are the most commonly asked questions and the First Presidency's responses to them:

"1. Some people suggest the Equal Rights Amendment is a purely political issue and the Church should not take a stand either for or against it. Do you agree?

"No. We believe ERA is a moral issue with many disturbing ramifications for women and for the family as individual members and as a whole.

"2. Specifically, why are you opposed to the Equal Rights Amendment?

"Preliminary to answering that question, it should be pointed out that we recognize men and women as equally important before the Lord and the law. We are opposed to the so-called 'Equal Rights' Amendment, but we are not opposed to such things as equal pay for equal work.

"From its beginnings, The Church of Jesus Christ of Latter-day Saints has championed the rights of women in our society. We recognize that there have been injustices to women before the law and in society in general.

"There are additional rights to which

women are entitled. We would prefer to see specific injustices resolved individually under appropriate, specific laws. We firmly believe that the Equal Rights Amendment is not the proper means for achieving those rights because:

"a. Its deceptively simple language deals with practically every aspect of American life, without considering the possible train of unnatural consequences which could result because of its very vagueness — encouragement of those who seek a unisex society, an increase in the practice of homosexual and lesbian activities, and other concepts which could alter the natural, God-given relationship of men and women.

"b. It would strike at the family, the basic institution of society. ERA would bring ambiguity to the family structure which could encourage legal conflict in the relationship of husbands and wives.

"c. ERA would invite legal action on every conceivable point of conflict between men and women. Its sweeping generalizations could challenge almost every legally accepted social custom, as well as every morally accepted behavior pattern in America.

"d. Men and women have differences biologically, emotionally, and in other ways. The proposed Equal Rights Amendment does not recognize these differences. For example, present laws protecting the rights of pregnant women in the working force could be challenged if ERA becomes law.

"e. Passage of ERA, with its simplistic approach to complex and vitally important problems, could nullify many accumulated benefits to women in present statutes, such as those protecting mothers and children from fathers who do not accept their legal responsibilities to their families."

"3. Does your Church encourage women to develop other abilities in addition to being good wives and mothers?

"Yes. In 1842, when women's

organizations were little known, the Prophet Joseph Smith established the women's organization of the Church, the Relief Society, as a companion body of the Priesthood. At the third meeting of the Society he said, ". . . I now turn the key in your behalf in the name of the Lord, and this Society shall rejoice, and knowledge and intelligence shall flow down from this time henceforth. . . ."

"Latter-day Saint women, from the beginning of the Church and continuing today, know how deeply the Church encourages them to exercise their free agency. They also know that in the Church, or in any organization or activity for that matter, free agency must be coupled with responsibility. Individual freedom without such responsibility leads to chaos.

"Latter-day Saint women are strongly encouraged to develop their individual talents, to broaden their learning and to expand their contributions to activities such as religious, governmental, cultural, educational and community pursuits. . . ." (Church News, 26 Aug. 1978, p. 2).

12 October 1978

"To General Authorities, Regional Representatives, Stake Presidents, Mission Presidents, Bishops, and Branch Presidents in the United States

"Dear Brethren:

"With the nation facing the prospect of continuing debate on the proposed Equal Rights Amendment, we take this opportunity again to bring to your attention our position on this important question.

"The history of the Church clearly demonstrates the long-standing concern of its leaders that women, as daughters of God, should have without discrimination every political, economic, and educational

opportunity. Where there now exist deficiencies concerning these matters, they can and should be corrected by specific legislation. Additionally, because of their unique capacities and responsibilities as wives and mothers, women should be the beneficiaries of such special laws as will safeguard their welfare and the interests of children and families.

"While the enactment or rejection of the Equal Rights Amendment must be accomplished by recognized political processes, we are convinced that because of its predictable results the matter is basically a moral rather than a political issue; and because of our serious concern over these moral implications, we have spoken against ratification, and without equivocation do so again. We are convinced, after careful study, after consultation with various Constitutional authorities, and after much prayerful consideration, that if the proposed amendment were to be ratified, there would follow over the years a train of interpretations and implementations that would demean women rather than ennoble them, and that also would threaten the stability of the family which is a creation of God.

"Because of our serious concern, we urge our people to join actively with other citizens who share our concerns and who are engaged in working to reject this

measure on the basis of its threat to the moral climate of the future."

Spencer W. Kimball
N. Eldon Tanner
Marion G. Romney

Current Status of ERA Ratification

Thirty-eight states must ratify the ERA for it to become a part of the United States Constitution. To date, thirty-five states have ratified. The fifteen states that have not ratified the amendment are: Alabama, Arkansas, Arizona, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

The first thirty states to ratify the amendment did so within the first twelve months following 22 March 1972. Since that time, only five additional states have ratified. During this same period, five states have voted to rescind their ratification. This suggests that as the amendment and its possible results are examined closely, many people are raising serious questions.
